



LINCOLN POLICE DEPARTMENT GENERAL ORDERS

NUMBER: 1430
TOPIC: INTERNAL INVESTIGATIONS
ISSUED BY: JAMES PESCHONG, CHIEF OF POLICE
DATE: 1-1-2016
SUPERSEDES: G.O. 1430, 2015
REFERENCE: G.O. 1440

I. POLICY

The Lincoln Police Department maintains a system for internal investigations into alleged or potential misconduct by employees. The department will conduct thorough, impartial, and timely internal investigations; take appropriate disciplinary action when misconduct is revealed; and respect the rights of the employees and citizens involved.

II. PROCEDURE

A. Internal Affairs Unit

1. The chief of police will appoint personnel to the Internal Affairs Unit to conduct internal investigations on his or her behalf.
2. The Internal Affairs Unit reports directly to the chief of police.
3. Internal Affairs Duties
 - a. Investigate citizens' complaints at the direction of the chief of police.
 - b. Conduct other investigations ordered by the chief of police.
 - c. Conduct investigations into firearms discharge and use of force and control incidents at the direction of the chief of police.
 - d. Brief the chief of police regarding each internal affairs complaint.

B. Immediate Resolution of Complaints

1. From time to time complaints arise from lack of information or misunderstanding. Many of these apparent complaints can be immediately resolved by means of information and explanation. If such communication resolves the matter to the satisfaction of the complainant, no further action is required. These incidents shall be documented by an Employee Incident Report marked "Inquiry."

C. Limitations on Complaint Investigation

1. The complaint investigation process is not intended to be used as an adjudicatory process for matters that should be resolved by trial. Complaints of false arrest will be investigated only when it is alleged that the officer acted without probable cause.
2. Level III complaint investigations will be completed within 14 days. Level IV complaints will be completed within 30 days. Extensions may be approved by the chief of police, in which case the complainant and employee will be given a status report.
3. Limitations on the investigation of complaints pertain solely to complaints received from the public, and in no way affect management rights or the discretion of the chief of police to investigate or act upon his or her own initiative.

D. Receipt of Complaints

1. Complaints will be accepted from any source.
2. Whenever possible, complaints should be referred to the Internal Affairs Unit during business hours, or to an on-duty supervisor.
3. Supervisors presented with a complaint shall complete an Employee Incident Report (EIR) which includes:
 - a. Complainant's name and personal information;
 - b. Type of complaint and brief summary of allegations;
 - c. Location, date and time the incident occurred;
 - d. Employee allegedly involved.
4. Supervisors shall deliver the EIR to the commanding officer or unit manager of the employee involved for review and routing.

E. Classification of Complaints

1. Complaints will be classified in general categories and designated as Level III or Level IV on the Employee Incident Report.
2. Level III complaints are of a minor nature, and are investigated by a supervisor in the

employee's chain of command. Examples of Level III complaints may include:

- a. Discourtesy;
 - b. Minor procedural violations;
 - c. Minor conduct problems.
3. Level IV complaints are of a serious nature, and are investigated by the Internal Affairs Unit. Examples include:
- a. Excessive force
 - b. False arrest
 - c. Harassment
 - d. Discrimination and/or racial profiling
 - e. Serious or criminal misconduct
 - f. Commission of a criminal offense
4. The chief of police has the final authority to determine the classification of the complaint. The following criteria may be considered in reclassifying a complaint as Level III or Level IV:
- a. Severity of the alleged misconduct;
 - b. Any obvious mitigating or aggravating circumstances;
 - c. The severity of disciplinary action which might reasonably be anticipated if the allegations in the complaint are proven;
 - d. The past conduct of the employee involved.

F. Level III Complaint Investigation

1. The Employee Incident Report will be assigned to a supervisor by the commanding officer or unit manager, and the control copy immediately forwarded to the Internal Affairs Unit.
2. The supervisor will be responsible for investigating the complaint. The supervisor's investigation shall include:
 - a. Review of any reports related to the incident;
 - b. Interview of the involved employee regarding the allegation;
 - c. Interview of any witnesses;
 - d. Recontact with the complainant, if necessary;
 - e. Other investigative steps that maybe necessary.
3. Upon completion of the investigation, the complainant will be recontacted by the supervisor, commanding officer, or unit manager and informed of the findings, except in cases where the complainant has specifically requested no further notification.
4. The Employee Incident Report and any additional reports, will be returned through the chain of command to the Internal Affairs Unit for review and retention in accordance with General Order 1440, "Disciplinary

Action." A copy of the completed EIR will be forwarded to the employee.

5. The chief of police retains the authority to accept the findings, reach another finding, or direct further investigation.

G. Level IV Complaint Investigations

1. The Internal Affairs Unit will investigate all Level IV complaints, as determined by the chief of police.
2. Whenever practical, the Internal Affairs Unit will request that the complainant sign a complaint form that includes a brief description of the nature of the complaint.
3. A letter will be sent to the complainant acknowledging receipt of the complaint.
4. Department employees who are the subject of a Level IV complaint shall receive written notification, with a copy sent to the employee's commanding officer or unit manager and the assistant chief.
5. Upon receipt of a letter, the employee shall contact the Internal Affairs Unit within five calendar days for the purpose of scheduling an interview that must be held within ten days of the date on the written notification.
6. When ordered by the chief of police, employees shall submit a complete written report concerning the incident giving rise to the complaint. The report will be submitted to the Internal Affairs Unit within five working days of the order.
7. The following guidelines apply to Internal Affairs interviews:
 - a. Interviews will be conducted during regular office hours. Reasonable attempts shall be made to schedule interviews at other times when necessary.
 - b. Any employee interviewed off-duty shall be entitled to overtime pay, however no overtime will be authorized for any off-duty employee who appears without an appointment.
 - c. Interviews with employees will be recorded, and whenever possible, interviews with citizens should be recorded.
 - d. Citizens and employees may be represented by an attorney, who may be present during interviews.
 - e. Reasonable rest breaks will be provided.
 - f. Internal Affairs shall give the Garrity warnings whenever:
 - (1) A separate criminal investigation is underway; or

- (2) The complaint itself alleges conduct which may constitute a criminal offense; or
 - (3) In other circumstances authorized by the chief of police.
- g. Internal Affairs shall not provide information to any criminal investigator concerning the statements made by the employee during the internal investigation, nor any information obtained in whole or in part from such statements.
- 8. Other Investigative Actions
 - a. The Internal Affairs Unit may employ other investigative techniques or procedures, as may be necessary, including:
 - (1) Collection of evidence at the scene of the incident, including diagrams and photographs;
 - (2) Review of reports relating to the incident;
 - (3) Scientific, lab, medical, or polygraph examinations;
 - (4) Identification procedures.
 - b. Financial records or disclosure statements may be required only with a warrant or subpoena.
 - c. Polygraph, medical, laboratory, or scientific examination will be ordered only at the direction of the chief of police, and as provided by law and labor agreements.
 - d. All complaints regarding bias or disparate treatment based on an individual's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or other identifiable groups made against an employee of the Department shall be investigated.
 - (1) A copy of each allegation of racial profiling shall be forwarded to the Nebraska Commission on Law Enforcement and Criminal Justice by the Internal Affairs Sergeant.
 - (2) The Commission shall also be provided with a written notification of the review and disposition of the allegation.
 - (3) No information revealing the identity of the law enforcement officer or the complainant shall be used, transmitted or disclosed in the documentation alleging racial profiling sent to the Commission.
- 9. Disposition of Level IV Complaints
 - a. The Internal Affairs Unit will complete a detailed investigative report concerning the findings, and will recommend one of the following dispositions:
 - (1) Exonerated: The investigation showed that the act giving rise to the complaint occurred, but the actions of the employee were justified, lawful, and proper.
 - (2) Sustained: The investigation conclusively proved the allegation.
 - (3) Not sustained: The investigation failed to conclusively prove or conclusively disprove the allegation.
 - b. Internal Affairs will make no disciplinary recommendations.
 - c. The Internal Affairs investigative report will be forwarded to the chief of police, who may accept the disposition, make another finding, or direct further investigation.
 - d. The employee will be notified of the disposition in writing. The employee's commanding officer or unit manager and assistant chief will also be notified of the disposition.
 - e. The chief of police shall prepare a letter to the complainant regarding the disposition. This letter will be held 10 days, or until the first court disposition if a case is pending.
- 10. Sustained Complaint Hearing
 - a. When the Internal Affairs Unit has recommended that a Level IV complaint be sustained, the chief of police shall schedule an administrative hearing. The employee may waive the hearing in writing to the chief of police.
 - b. The employee may be represented by counsel and one other representative.
 - c. The hearing may be attended by the employee's supervisors, the legal advisor and others designated by the chief of police.
 - d. The Internal Affairs investigator will present his or her findings, and the employee may present any evidence, rebuttal or other statement.
 - e. The chief of police shall determine whether the complaint is sustained, and the corrective action to be taken, if any.
- H. Criminal Investigations
 - 1. The chief of police may order an investigation into alleged criminal conduct by employees. The criminal investigation will be separate from the Internal Affairs investigation, and is for the purpose of determining if a crime has been committed, if

the employee is responsible, and to collect evidence for prosecution.

2. Provisions of this General Order regarding notification to employees concerning complaints may be abrogated when such notice would jeopardize a criminal investigation.
3. The chief of police may designate an outside law enforcement agency to conduct a criminal investigation when an employee is allegedly involved, and appoint a command officer to function as liaison with the outside agency during the investigation.
4. An internal investigation for administrative purposes may be ordered by the chief of police in addition to any criminal investigation.

4. Access within the department will be restricted to those persons with a need to know the content of the files, based on some part in the Internal Affairs or the discipline process. Access must be approved by the chief of police.
5. The department shall comply with all provisions of labor agreements concerning the maintenance and retention of Internal Affairs records.

I. Other Investigations

1. Civil claims and lawsuits against the department or its personnel may be directed by the department legal advisor to the Internal Affairs Unit for an investigation of the circumstances giving rise to the action, for the sole purpose of defending a lawsuit.
2. Internal investigations for the purpose of fact finding may be initiated at the direction of the chief of police concerning employee conduct, procedures, or any other issue.
3. While these investigations may follow the general format of complaint investigation outlined in this General Order, the chief of police retains the fundamental management right to examine employee and department performance.

J. Records of Internal Investigations

1. The Internal Affairs Unit is responsible for the safekeeping and maintenance of Internal Affairs files and records.
2. Internal Affairs shall maintain a summary record of each complaint for five years from the date of the incident, including:
 - a. Name of officer and complainant;
 - b. Date of complaint;
 - c. Nature of complaint;
 - d. Department and Internal Affairs case numbers;
 - e. Disposition of complaint.
3. Internal Affairs files, records, and investigative reports are for the internal administrative purposes of the department, and shall not be released or maintained outside the department except as required by court order, state law or labor agreements.